

2012 Annual Report of the Iowa Consumer Credit Code

The Attorney General is directed by Chapter 537 of the Iowa Code to administer the Iowa Consumer Credit Code (hereinafter "ICCC"). Since 1974, the Attorney General has delegated primary authority for the administration and enforcement of the ICCC to the Consumer Protection Division (hereinafter "CPD"). The head of the CPD is the Administrator of the ICCC and has traditionally appointed a Deputy Administrator to oversee the day-to-day duties of regulating and enforcing the ICCC. The current Administrator is Bill Brauch, Director of the CPD, and the current Deputy Administrator is Assistant Attorney General Jessica Whitney.

The Administrator's responsibilities under the ICCC include resolving complaints, investigating serious complaints, formulating and carrying out litigation, drafting legal opinions, conducting consumer credit educational activities and programs, and monitoring the status of consumer credit in the state. The Administrator coordinates with other Iowa agencies, other states with versions of the Uniform Consumer Credit Code, and federal agencies with oversight of the consumer credit industry.

Iowa Code section 537.6104(5) directs the Administrator to report annually on the ICCC and the state agencies charged with administering the ICCC, as well as the general availability of credit. This report is broken down into sections that correspond with the reporting requirements of Iowa Code section 537.6104(5).

The contents of this report are compiled from the previous year's report, with relevant information updated to reflect recent changes.

1. Consumer Complaints

Iowa Code section 537.6104 allows the Administrator of the ICCC to handle consumer complaints and encourage voluntary compliance with Code requirements. The Administrator engages in a conscious effort to combine those two responsibilities. When handling consumer complaints, the Administrator generally seeks voluntary compliance first and takes legal action second or as needed.

The processing, assignment, and handling of ICCC complaints are a part of the daily activity of the CPD. The CPD received a total of 3,272 written consumer complaints during the 2012 calendar year, at least 944 of which were filed directly pursuant to the ICCC. Though complaints whose main focus was credit concerned about 29% of the total received by the CPD, hundreds of other complaints also involved credit although not classified as such, like complaints about home improvements and auto issues.

Complaints concerning credit ranked highly in the top categories of consumer complaints and should continue to be regarded as an area of major concern. The credit complaints break down as follows, with their rank in relation to other categories of complaints:

1. Home Mortgages	460
2. Debt Collection	270
10. Motor Vehicle Credit	101
13. Mortgage Foreclosure Rescue	75
19. Student Loans	38

For all complaints, many of the inquiries handled by the CPD can be resolved by explaining the applicable provisions of the ICCC to those involved in the complaint. Other times, the office must first investigate the complaint and determine the facts in order to outline to the parties how the law applies to their situation. The CPD strives to resolve the complaints in a manner that makes the consumer whole, where appropriate.

Complaints concerning debt collection practices continue to appear close to the top of the list, coming in second place for the third consecutive year after a string of years ranking first. The CPD's policy toward debt collection complaints is to resolve them at the administrative level, obtain redress for any aggrieved consumers, and stop any problematic practices. Article 7 of the ICCC sets forth with impressive thoroughness exactly what debt collection techniques, practices, and procedures are prohibited. Most debt collection complaints are filed by consumers aggrieved by what they believe is an unlawful debt collecting practice. Generally, the CPD resolves the problem through an informal agreement with the lender or debt collector. When the ICCC is clearly violated, the CPD requires not only redress for the aggrieved consumer but the Administrator may seek and obtain an Assurance of Discontinuance pursuant to Iowa Code section 537.6109 where the creditor or collector clearly states that they have been notified as to what is wrong with their practice in question and that they are agreeing to discontinue it. In some instances, the creditor or collector is able to demonstrate either that there has been no violation of the ICCC or that any violation was unintentional and the creditor or collector intends to comply with the statute.

When informal resolution of debt collection complaints is insufficient, the CPD engages in enforcement actions to ensure Iowa lenders and debt collection agencies keep their practices in compliance with the ICCC. The CPD has also been involved in multi-state actions against debt collectors and this year obtained major settlements against two of the nation's largest debt collection firms. Both settlements provided for consumer restitution in addition to injunctive relief. Thanks to their increased resources and jurisdictional reach, these multi-state actions provide an excellent opportunity to investigate companies, stop any prohibited practice, and obtain appropriate redress.

Additionally, the CPD continues to receive a number of complaints based upon problems arising from automobile financing. The growth of automobile dealers that self-finance, known as "Buy Here, Pay Here," dealers has resulted in increase in the number of auto finance complaints and ICCC violations. Many of these complaints have led to larger investigations of dealers. The investigations have revealed the underreporting of finance charges, illegal late fees, and failure to issue notices of rights to cure, among other violations. In calendar year 2012, the CPD obtain Assurances of Discontinuance against six Iowa used car dealers and initiated investigations of others. The resolution of these investigations is usually a refund of all illegal charges, changes in paperwork and procedures in order to comply with the law, sometimes payment of a civil penalty, and the signing of an Assurance of Discontinuance pursuant to Iowa Code section 537.6109.

In addition to the formal written complaints the CPD receives, the day-to-day work of the attorneys assigned to ICCC inquiries, complaints, and investigations often involves interacting with the borrowing public, credit industry representatives, attorneys, and representatives of other state agencies about compliance with the ICCC. Iowa Code section 537.6104(1)(d) requires the Administrator to counsel persons and groups on their ICCC rights and duties. The day-to-day activities in administering the ICCC involve numerous emails, telephone calls, letters, informal interpretations, responses, and resolutions between the CPD office and the various parties outlined above. In addition to advice given via phone and email, the CPD also issues what are called informal advisory opinions, which are written responses to questions concerning credit and/or the interpretation of the ICCC. In 2012, the office

released three informal advisory opinions concerning debt collection, rebates for simple interest accounts, and applying an increased APR to outstanding accounts. All informal ICCC advisory opinions are available on the Attorney General's website.

2. Credit Education

The ICCC also requires that the Administrator establish educational programs on credit practices and problems. *See* Iowa Code § 537.6104(1)(e). With limited staff to devote to ICCC matters, the CPD has made education for consumers, the lending industry, and members of the Bar a top priority. The recent financial crisis has only served to underscore the need for greater financial education.

Once again CPD staff members made a number of presentations to large groups concerning state and federal consumer credit laws. In February at the annual meeting of the Iowa Credit Union League the Deputy Administrator gave a talk and took questions about the Iowa Consumer Credit Code and compliance issues the office was seeing. In March, the Deputy Administrator addressed the members of the United Auto Works at their annual meeting to discuss the multi-state mortgage settlement. The Deputy Administrator spoke on this same topic at the spring Iowa Finance Authority Conference and in the fall as part of an Iowa Bar Association government practice program. In April, the Deputy Administrator traveled to Davenport to speak at the HELP Legal Aid conference about the CARD Act, the Dodd-Frank Act, and payday loans. In June, the Deputy Administrator was part of a panel presentation on debt collection issues at the Magistrate's annual conference. Finally, in November, the Deputy Administrator and an investigator spent a morning conducting in-depth motor vehicle consumer credit training for Department of Transportation ("DOT"). The in-depth training has allowed DOT officers to better spot consumer credit violations and has resulted in many investigations.

The CPD also participates in a variety of less formal consumer-oriented conferences, seminars, meetings, and speaking presentations, including presentations to graduate level college classes, law school classes, high school classes, and senior citizens' groups. The attorneys and investigators of the CPD speak around the state on the general topic of consumer fraud and protection in Iowa. Though these presentations deal more generally with the overall work of the CPD, they also discuss the basic provisions of the ICCC and often respond to specific ICCC questions from audience members. The CPD also assists with an "Attorney General Booth" each year at the Iowa State Fair, staffed by employees from throughout the Attorney General's office. Many of the questions from consumers visiting the booth pertain to consumer credit, and many of the educational materials offered to the public through the booth seek to inform consumers about the ICCC and its consumer credit protections.

The Division has also provided guidance and education in the field of motor vehicle financing. The staff has given advice on continuing education courses for motor vehicle dealers, focusing on motor vehicle finance. The staff also routinely answers questions from motor vehicle trade groups and many of those questions are finance-related. For example, in June, the Administrator made a presentation on consumer credit and consumer fraud issues at the annual conference of the National Independent Automobile Dealers Association. In addition, the Division has contributed to a dealer outreach piece sent out by the Iowa Department of Transportation.

In monthly publications entitled "Consumer Advisories" the CPD reaches tens of thousands of Iowans. The "Consumer Advisories," are bulletins that provide tips and information to consumers on relevant consumer issues. During 2012 a number of these focused on consumer-credit issues including credit cards, tax refund anticipation loans, and foreclosure rescue scams. These advisories are sent

statewide to over 3,000 groups and communities and are free to reprint and redistribute. They are also available on the Attorney General's website.

In addition, to public speaking, meetings, and publications, staff members also have informal discussions and meetings with affected individuals. It is not uncommon for representatives of various businesses or members of the credit industry to come into the CPD office with their attorneys to ascertain what they must do to comply with the ICCC. Staff members regularly respond to questions posed by other state agencies, as well. The many ICCC-related questions posed to staff members during all these public contacts shows that there is still a great deal of confusion about the law, and that even a stronger educational campaign may be needed.

3. Developments in Iowa Consumer Credit Law

In 2012, there was only one reported case concerning the ICCC, *Ross v. Vakulskas Law Firm, PC*, No. 10-CV-4100-DEO, 2012 WL 4092419, at *3 (N.D. Iowa Sept. 17, 2012). *Ross* is a non-reported federal district court case, so its precedential value is limited; however, its analysis is worth examining and noting.

In *Ross*, a federal district court considered whether the defendant debt collector violated the Federal Fair Debt Collection Practices Act ("FDCPA") through either a failure to properly serve plaintiff with an Order to Appear for a Judgment Debtor's Examination or a failure to file consumer debt collector notification with the Iowa Attorney General pursuant to Iowa Code sections 537.6201-537.6203. 2012 WL 4092419, at *3 (part of the ICCC). The court found that service of process is not a debt collection specific process therefore it falls outside of the strict liability standard imposed under the FDCPA, which would make defendants automatically liable for an FDCPA violation for failed service of process. The court further found that in the current case the defendants had no reason to believe that the plaintiff was not properly served and therefore could not be liable for improper service. *Id.* at *5-*6. The court also found that the debt collector's failure to file debt collector notification did not result in a breach of the portion of the FDCPA which forbids a debt collector from taking or threatening "to take any action that cannot legally be taken or that is not intended to be taken." *Id.* at *8.

The court further found that failure to file notification with the Iowa Attorney General's Office before commencing debt collecting business in Iowa did not render all subsequent actions of the debt collector invalid because the filing of notification was not a prerequisite to do business in Iowa in that statute gave the collectors had 30 days after commencing business in the state to file. *Id.* The court also differentiated between licensure, a more rigorous process, and filing notification, a less rigorous process. The court noted that the failure to obtain a license renders each and every action under the license unlawful as opposed to failing to file notification which, pursuant to Iowa Code sections 537.6113 and 537.5301, is a simple misdemeanor and subjects the violator to a civil action brought by the Administrator. *Id.* at *9.

The court also addressed the same two claims as violations of the Iowa Debt Collection Practices Act, a state statute which largely mirrors its federal counterpart. The court again found that the improper service of process was not a breach of the IDCPA and regardless there appeared to be proper service in the case before it. *Id.* Additionally, the court found that under the IDCPA the defendant's failure to file notification did not invalidate defendant's debt collection activities. *Id.* The court did not choose to follow *Chase Bank v. Solberg*, an Iowa Small Claims court decision wherein that court invalidated future action by a debt collector for failure to file notification. *Id.* at *9.

It is worth repeating that the *Ross* case is non-binding, as it is a federal district court case. Indeed, the issues in *Ross* appear far from settled given that an Iowa small claims court, the aforementioned *Chase Bank v. Solberg*, has a contravening decision. If a case with similar facts made it to the Iowa appellate courts, it might be appropriate for the Administrator to file an amicus brief weighing in on the issue.

4. Agency Reports on Consumer Credit

Two state regulatory units are charged by Iowa Code § 537.6105 with enforcing the ICCC with respect to the lending institutions they license and regulate: the Iowa Division of Banking and the Iowa Division of Credit Unions. Throughout the year the Administrator has frequent contact with these agencies regarding interpretation and enforcement of credit code provisions and changes in the consumer credit industry. The Administrator notifies a regulatory agency when the CPD receives a complaint involving one of the agencies' licensees. Likewise, the agencies alert the Administrator of serious violations that come to their attention.

Each agency examines its licensees for ICCC compliance during the agency's regular, periodic examinations. The Credit Union Division, overseeing the state's 120 credit unions, examines each credit union every two years. The Credit Union Division received zero ICCC-related complaints in 2012. The Banking Division, which oversees licensing for 929 loan companies, delayed deposit locations, debt managers, closing agents, money servicers, and mortgage companies, received 32 complaints in 2012, relating to the ICCC. Of the 32 complaints, 18 involved internet lending and 14 involved customer service-type issues.

5. Consultation With Other Jurisdictions

The CPD benefits from the experience and knowledge of credit code administrators in other states by participating in the American Conference of Uniform Consumer Credit Code States (ACUCCCS) every year. The conference is an excellent forum at which to discuss common problems in UCCC administration and collectively work toward fair resolution. The meetings enable each state to keep its administration of its consumer credit code in harmony with other jurisdictions as required by section 537.6104 of the Iowa Code.

The 2012 ACUCCCS meeting was held in Denver, Colorado. Colorado had not hosted an ACUCCCS meeting in approximately a decade. Iowa and a majority of other states attended the meeting. Much of the discussion again centered on the Dodd-Frank Act in conjunction with state law and the new rules that were being promulgated. States also shared their various experiences working with the federal Consumer Financial Protection Bureau. Additionally, the group held an in-depth discussion about the continuing implementation of the SAFE act and the challenges it poses both with technology and with the myriad of state-specific laws. And, as always, discussion on legislative changes to each state's statute was held.

The ACUCCCS states also keep in regular contact via an email listserve. The listserve provides an excellent opportunity for discussion of potential changes in the law regarding consumer credit and the states' interpretation of portions of the ICCC.

In addition, the Administrator, after consultation with other states, submitted comments concerning motor vehicle credit to the Federal Trade Commission. The ICCC Administrator participated in two of the three national "roundtables" held by the Federal Trade Commission ("FTC")

on automobile dealer practices. Following the FTC roundtables, the ICCC Administrator filed Comments with the FTC that addressed several consumer credit issues. The Comments were joined by thirty other states and by the District of Columbia. The comments are available for viewing here: <http://www.ftc.gov/os/comments/motorvehicleroundtable/00112-82927.pdf>

The Comments included recommendations that the FTC: 1) adopt rules and bring enforcement actions to deter “Yo–Yo Sales;”¹ 2) ban dealers from packing charges for optional items into advertised monthly payments; 3) regulate auto rent-to-own and lease-to-own arrangements; 4) join state attorneys general in acting against dealers who fail to include in disclosed interest rates certain fees the dealers pay lenders in connection with subprime auto loans; 5) act against dealers who engage in deceptive and unfair practices in connection with yield spread premiums in auto loans; and, 6) act against lenders which fail to comply with the FTC Rule Concerning Consumers’ Claims and Defenses, better known as the “FTC Holder Rule,” 16 CFR Part 433.

6. Availability of Consumer Credit

By keeping in frequent contact and exchanging information with other state consumer credit administrators throughout the year, the CPD has been able to keep abreast of trends in the nationwide consumer credit industry. Unfortunately, we have been unable to compile information regarding the availability of credit to Iowa consumers due to the high cost of such data gathering and lack of any current data gathering system.

However, from its contacts with consumers, businesses, and the industry, as well as other state agencies, the CPD is able to assess the availability of credit anecdotally. Currently, credit is widely available to almost all Iowa consumers. However, the quality of the credit that may be available to some is suspect. Thanks to the proliferation of direct deposit services (also known as payday loans) and hard-to-police internet loans, much of the credit available to some consumers is only available at a very high cost. Higher interest open-end credit, in the form of credit cards, also appears to be widely available. Additionally, home loans remain harder to obtain for people with lower credit scores due to the ongoing financial crisis and new federal regulation. The tightening of home lending standards brought about by increased regulation may benefit consumers by better assuring they only obtain home loans that they may reasonably be expected to repay.

7. Proposed Changes to the ICCC

Finally, the Office of the Attorney General reviews the ICCC to suggest to the legislature amendments and improvements. Again in 2012, the Attorney General, through legislation, proposed raising the jurisdictional limit of the Code to \$50,000, the same jurisdictional limit now applicable under the federal Truth in Lending Act, on motor vehicle transactions only. As noted in last year’s report, only consumer transactions under \$25,000 receive the substantial protections of the ICCC. The \$25,000 limit was set in 1974; in today’s dollars, that 1974 limit is actually valued at over \$100,000. In fact, the average price of a new car—one of the classic models of a consumer credit transaction—is over \$25,000. The result is that many motor vehicle credit transactions are now excluded from the protections of the ICCC and escape state regulation altogether, which is something incredibly unusual

¹ A “Yo–Yo” sale is selling a vehicle contingent on obtaining financing for the purchase with or without knowledge that the dealer cannot obtain financing acceptable to the consumer, and then acting to bind the consumer by selling the consumer’s trade-in or via other means of coercing acceptance of unfavorable credit terms. The dealer may demand the consumer return the vehicle if financing is not obtained, sometimes with illegal threats to have the consumer arrested for failing to return the vehicle, thus the reference to “Yo–Yo”.

as almost every state regulates motor vehicle credit transactions in some manner. Excluding a wide swath of consumer transactions which were originally contemplated to fall within the ICCC's jurisdiction leaves Iowa consumers deprived of the rights the ICCC sought to grant. The Attorney General's modest proposal of increasing the jurisdictional limit for motor vehicle transactions failed to make it out of subcommittee on either side of the Iowa legislature.

The interpretation and enforcement of the Iowa Consumer Credit Code is an important area where the activities of the Attorney General's office affect every Iowan. As the office deals with broad authority in the areas of interest rates, lending practices, and debt collection, and as Iowans continue to face credit and debt challenges, it is clear that the protections afforded consumers by the ICCC are more important than ever.